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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 3M Company,

NO. C 06-01225 JW

12 Plaintiff,

**NOTICE OF INTENT TO APPOINT A
SPECIAL MASTER**

13 v.

14 Rollit, LLC, et al.,

15 Defendants.
_____ /

16 The Court conducted a hearing of Defendants' Motion for Summary Judgment on March 10,
17 2008. Counsel for the respective parties were present.

18 The Court suggested the appointment of a Special Master to assist in determining the
19 undisputed facts in this lawsuit. The parties were agreeable. Thus, due to the parties' consent, the
20 complexity of the factual issues involved in this case, and the cost savings to the parties which will
21 result from a more focused management of this pre-trial matter, the Court concludes that the
22 appointment of a Special Master would be beneficial to all. Pursuant to Fed. R. Civ. P. 53, the Court
23 notifies the parties of its intent to appoint a Special Master.

24 **A. Scope of the Special Master's Appointment**

25 The Special Master shall have the power to interview or conduct hearings for the collection
26 of evidence from the parties, any designated expert witnesses and third parties, and to make a report
27 and recommendation with respect to the following issues:
28

(1) What are the undisputed facts regarding the date, participants, and substance of any communications which took place between Plaintiff and Moore Wallace Company as to sales by Moore Wallace of paper with respect to a trademark of Plaintiff. What, if anything, was communicated to Defendants with respect to these matters when it purchased papers from Moore Wallace in 2005-2006. Among other matters deemed appropriate by the Special Master to fulfill the purpose of the appointment, the Special Master's recommendation shall specifically address the undisputed facts, insofar as can be determined with respect to:

- (a) the source, color and manufacturer (including the manufacturer's designation of the color) of any paper as to which Moore Wallace sought approval to sell from Plaintiff in 2003;
- (b) the source, color and manufacturer (including the manufacturer's designation of the color) of any paper which Defendants purchased from Moore Wallace in 2005-2006;
- (c) the differences, if any, between the color of the paper Plaintiff approved in 2003 and the color of the paper Defendants bought in 2005-2006;

(2) What is the range of colors being sold by Moore Wallace or any manufacturer coming to the attention of the Special Master that Plaintiff claims are confusingly similar to its mark.

(3) With respect to any fact which is disputed, the Special Master shall make a recommendation if the Special Master determines that the dispute is not genuine.

Each finding or recommendation of the Special Master shall be supported by reference to the document or testimony upon which it is based. Where available, the report and recommendation shall include exemplars of the paper which is the subject of the finding.

1 **B. Fees and Costs of Special Master**

2 Unless the Court receives a recommendation from the Special Master for some other
3 apportionment, each party shall bear the cost of the Special Master on a per side basis, payable in
4 advance. The Special Master shall report to the Court on a periodic basis regarding the state of his
5 fees and expenses. Unless otherwise ordered, the Special Master shall, in his report, advise the
6 Court, without specifically identifying parties, as to whether the parties are current in their payment
7 of his fees and expenses.


8 **C. Nomination of Special Master**

9 The Court nominates Mr. George C. Fisher.¹ The parties shall file any objections to Mr.
10 Fisher being named as Special Master on or before **March 18, 2008**. In their objections, the parties
11 shall provide alternate nominations.

12 If no objection is filed and Mr. Fisher accepts his appointment, Mr. Fisher shall file an
13 affidavit as required by Fed. R. Civ. 53(b)(3). The Court's appointment of the Special Master shall
14 become effective on **March 19, 2008**.

15 Once appointed, the Special Master shall file his report and recommendation on or before
16 **April 25, 2008**.

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18 Dated: March 13, 2008



JAMES WARE
United States District Judge

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26 _____
27 ¹ Mr. Fisher may be contacted at (650) 424 0821; georgecfisher@gmail.com;
28 <http://www.gfisherlaw.com>

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: March 13, 2008

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy